Filed 3/16/10 Clark v. Superior Court CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

ALLAN D. CLARK, Petitioner, v. THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent; DEBRA BOWEN, as Secretary of State, etc., et al., Real Parties in Interest.	C064430 (Super. Ct. No. 34-2010-80000460)

The state Legislature originally drafted the proposed constitutional amendment that became Proposition 14, as well as the ballot label, title, and summary that will appear in the ballot materials provided to voters. (Stats. 2009, 3d Ex. Sess. 2009, ch. 7; Sen. Const. Amend. No. 4 (hereafter SCA 4) Stats. 2009 (2009-2010 Reg. Sess.) res. ch. 2.)

Petitioner Allan D. Clark challenges the ballot label, title, and summary on the grounds that the language used therein is argumentative, misleading, and otherwise biased toward enactment of the proposition. Petitioner first filed a petition

for writ of mandate in the Sacramento Superior Court. The superior court issued a judgment and writ of mandate on March 12, 2010, which concluded that some of the language should be modified. Petitioner filed the instant petition in this court later that same day, claiming the superior court's ruling does not go far enough and that language in the revised ballot title and summary is still not sufficiently objective.

As we shall explain, we agree with petitioner insofar as the superior court's revisions continue to describe Proposition 14 as a "reform" of our election procedures. We otherwise reject petitioner's claims and shall therefore grant in part and deny in part the instant writ petition.

We further conclude that remedy by appeal from the superior court's order is inadequate, considering the very short time frame that remains available to revise the ballot materials. (See *Andal v. Miller* (1994) 28 Cal.App.4th 358, 360-361; *Lungren v. Superior Court* (1996) 48 Cal.App.4th 435, 438 (*Lungren*).) In order to preserve this court's jurisdiction, we issue a mandatory stay that effectively grants petitioner the relief to which we conclude he is entitled. Such a stay is needed to preserve this court's jurisdiction pending finality of this decision. (See *Lungren,* at pp. 437, 443; see also *People ex. rel. S. F. Bay etc. Com. v. Town of Emeryville* (1968) 69 Cal.2d 533.)

BACKGROUND

In February of 2009 the Legislature passed SCA 4, which would modify election procedures in California to create an open

primary system by amending article II of the California Constitution. Thereafter, the Legislature passed and the Governor signed Senate Bill No. 19, which directed that the proposed amendment be placed on the ballot for the statewide primary election on June 8, 2010. (Stats. 2009, 3d Ex. Sess. 2009, ch. 7.)

A. The Proposed Constitutional Amendment

Under SCA 4, the primary election system in California would be changed to an open primary in which the top two vote-getters would be selected to compete in the general election regardless of their party affiliations. Section 5 of article II of the state Constitution would provide, in pertinent part: "All voters may vote at a voter-nominated primary election for any candidate for congressional and state elective office without regard to the political party preference disclosed by the candidate or the voter, provided that the voter is otherwise qualified to vote for candidates for the office in question. The candidates who are the top two vote-getters at a voter-nominated primary election for a congressional or state elective office shall, regardless of party preference, compete in the ensuing general election."[1]

The proposed amendment finds and declares that, "At the time they file to run for public office, all candidates shall

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[1] The proposed constitutional amendment states that it makes no change in current law with respect to presidential primaries and therefore conforms to the ruling in *Wash. State Grange v. Wash. State Republican Party* (2008) 128 S.Ct. 1184 [170 L.Ed.2d 151].

have the choice to declare a party preference. The preference chosen shall accompany the candidate's name on both the primary and general election ballots." Further, it amends section 5, subdivision (b) of article II of the State Constitution to read, in pertinent part: "(b) Except as otherwise provided by Section 6, a candidate for a congressional or state elective office may have his or her political party preference, or lack of political party preference, indicated upon the ballot for the office in the manner provided by statute." (SCA 4 (2009-2010 Reg. Sess.) res. ch. 2, § 5(b).)

B. Ballot Label, Title, and Summary

Senate Bill No. 19 sets forth the ballot label, title, and summary to appear on the ballot for the proposed constitutional amendment. Senate Bill No. 19 provides: "Notwithstanding Sections 13247 and 13281 of the Elections Code or any other provision of law, all ballots for the June 8, 2010, statewide primary election shall have printed thereon as the ballot label for the measure described in subdivision (a) the following: [¶] 'ELECTIONS. PRIMARIES. GREATER PARTICIPATION IN ELECTIONS. Reforms the primary election process for congressional, statewide, and legislative races. Allows all voters to choose any candidate regardless of the candidate's or voter's political party preference. Ensures that the two candidates receiving the greatest number of votes will appear on the general election ballot regardless of party preference.'" (Stats. 2009, 3d Ex. Sess. 2009, ch. 7, § 9(b)(1).) Senate Bill No. 19 further provides: "Notwithstanding any other provision of law, the

language in paragraph (1) shall be the only language included in the ballot label for the condensed statement of the ballot title, and the Attorney General shall not supplement, subtract from, or revise that language, except that the Attorney General shall include the financial impact summary prepared pursuant to Section 9087 of the Elections Code and Section 88003 of the Government Code. The ballot label is the condensed statement of the ballot title and the financial impact summary."
(Stats. 2009, 3d Ex. Sess. 2009, ch. 7, § 9(b)(2).)

With respect to the ballot title and summary, Senate Bill No. 19 provides: "Notwithstanding Sections 9050, 9053, and 9086 of the Elections Code or any other provision of law, the Secretary of State shall use the following as the ballot title and summary for the measure described in subdivision (a): [¶] 'PRIMARY ELECTION PROCESS REFORM. GREATER PARTICIPATION IN ELECTIONS. Encourages increased participation in elections for congressional, legislative, and statewide offices by reforming the procedure by which candidates are selected in primary elections. Gives voters increased options by allowing all voters to choose any candidate regardless of the candidate's or voter's political party preference. Ensures that the two candidates receiving the greatest number of votes will appear on the general election ballot regardless of party preference. Does not change primary elections for President, party committee offices, and nonpartisan offices.'" (Stats. 2009, 3d Ex. Sess. 2009, ch. 7, § 9(c)(1).) Again, Senate Bill No. 19 provides that this language shall be the only language included in the

title and summary and prohibits the Attorney General from modifying it (with the exception of inclusion of the financial impact summary). (*Id.* at § 9(c)(2).)

C. Superior Court Proceedings

The proposed constitutional amendment became Proposition 14. The ballot materials were made available for public inspection from February 23, 2010, through March 15, 2010. On March 2, 2010, petitioner filed a petition for writ of mandate in the superior court challenging the label, title, and summary.

The Secretary of State and State Printer filed an answer to the petition prepared by their counsel, the Attorney General. They asserted that the case must be resolved by 5:00 p.m. on March 15, 2010, so as to allow sufficient time to distribute the ballot pamphlet within the time required by law. The State Printer presented a declaration stating: "The Office of State Publishing will require 55 working days to complete the printing and mailing of the current Voter Information Guide. This 55-day schedule assumes operation of the printing plant 24 hours per day, 5 days per week between March 15, 2010, and May 18, 2010, reserving the sixth day each week to address mechanical problems as necessary and to make-up for any time lost in the printing processes as a result of such problems."[2] The majority of voter

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[2] Elections Code section 9082 provides: "The Secretary of State shall cause to be printed as many ballot pamphlets as needed to comply with this code.

"The ballot pamphlets shall be printed in the Office of State Printing unless the Director of General Services determines that

information guides must be mailed by May 18, 2010, which is 21 days before the June 8 election. (See Elec. Code, § 9094, subd. (a).)[3]

Real parties in interest, the state Legislature and Legislative Analyst, filed an answer prepared by the Office of Legislative Counsel. Other parties intervened in the action and opposed the writ petition, including the Governor, Senator Abel Maldonado, and "Yes on 14—Californians for an Open Primary." Among the arguments advanced was that the court lacked the authority to review the ballot label, title, and summary, pursuant to Senate Bill No. 19.[4] The superior court rejected

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the printing of the pamphlets in the Office of State Printing cannot be done adequately, competently, or satisfactorily, in which case the Secretary of State, subject to the approval of the Director of General Services, shall contract with a private printing concern for the printing of all or a part of the pamphlets.

"Copy for preparation of the ballot pamphlets shall be furnished to the Office of State Printing at least 40 days prior to the date for required delivery to the elections officials as provided in Section 9094."

[3] Elections Code section 9094, subdivision (a) provides in pertinent part: "The Secretary of State shall mail ballot pamphlets to voters, in those instances in which the county elections official uses data processing equipment to store the information set forth in the affidavits of registration, before the election at which measures contained in the ballot pamphlet are to be voted on unless a voter has registered fewer than 29 days before the election. The mailing shall commence not less than 40 days before the election and shall be completed no later than 21 days before the election for those voters who registered on or before the 60th day before the election."

[4] The Attorney General intervened and filed a brief asserting that the Legislature's label, title, and summary should be

these arguments, concluding judicial review was warranted and a writ of mandate was appropriate where there was clear and convincing evidence that the language was false or misleading.

The superior court ordered that the ballot label, title, and summary be revised to read as follows:

1. Ballot Label

"ELECTIONS. INCREASES RIGHT TO PARTICIPATE IN PRIMARY ELECTIONS.

"Reforms the primary election process for congressional, statewide, and legislative races. Allows all voters to choose any candidate regardless of the candidate's or voter's political party preference. Ensures that the two candidates receiving the greatest number of votes will appear on the general election ballot regardless of party preference. Fiscal Impact: The data are insufficient to identify the amount of any increase or decrease in costs to administer elections."[5]

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accorded great deference; however, the Attorney General offered alternative proposed language should the court determine that such language was needed.

[5] The superior court's judgment specifies the following language: "The data are insufficient to identify the amount of any increase or decrease in costs to administer elections." But the superior court's judgment and the peremptory writ also refer to modification of the ballot pamphlet to conform to the text of the ballot label and title and summary as specified in an attached exhibit. That exhibit provides: "The data are insufficient to identify the amount of any increase or decrease in costs to administer elections will increase." The last two words of the sentence are obviously a typographical error. The language describing the fiscal impact is the subject of our opinion in a related matter. (*Taylor v. Superior Court* (Mar. 16, 2010, C064428) [nonpub. opn.].)

2. Ballot Title and Summary

"ELECTIONS. INCREASES RIGHT TO PARTICIPATE IN PRIMARY ELECTIONS.

"• Encourages increased participation in elections for congressional, legislative, and statewide offices by reforming the procedure by which candidates are selected in primary elections.

"• Gives voters increased options in the primary by allowing all voters to choose any candidate regardless of the candidate's or voter's political party preference.

"• Provides that candidates may choose not to have a political party preference indicated on the primary ballot.

"• Provides that only the two candidates receiving the greatest number of votes in the primary will appear on the general election ballot regardless of party preference.

"• Does not change primary elections for President, party committee offices and nonpartisan offices.

"Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact: The data are insufficient to identify the amount of any increase or decrease in costs to administer elections."[6]

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[6] See footnote 5, *ante*.

Petitioner filed the current petition in this court on Friday, March 12, 2010, alleging that the superior court's revision is inadequate to address issues of argumentative, nonobjective language included in the ballot label, title, and summary. On the morning of March 15, 2010, we issued a temporary stay and advised the parties that we were considering issuing a peremptory writ in the first instance and that any opposition or further opposition was to be filed on or before 12:00 p.m. on March 16, 2010. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171 (*Palma*).) On March 15, 2010, real parties in interest Abel Maldonado and "Yes on 14—Californians for an Open Primary" filed opposition. That same day, real party in interest the Governor filed a letter brief in opposition; real parties in interest the Secretary of State and the State Printer filed an answer; and real party in interest the Attorney General filed a response to the petition. On March 16, 2010, real party in interest the state Legislature filed a letter brief in opposition to the petition; real parties in interest Abel Maldonado and "Yes on 14—Californians for an Open Primary" filed supplemental opposition to the petition; and petitioner filed a reply.

DISCUSSION

I. Timeliness

We conclude that there is sufficient time to act on the current petition, considering the issues raised and the procedural context. The petition was filed within the public comment period, which in this case commenced exactly 20 days

before the Secretary of State planned to send the ballot materials to the State Printer. (See Elec. Code, § 9092; Gov. Code, § 88006.) On March 2, 2010, petitioner filed a petition for writ of mandate in the superior court and immediately filed this petition in this court on March 12, 2010, shortly after the superior court announced its decision granting limited relief. As previously described, the Secretary of State has intended to submit the ballot materials to the State Printer by 5:00 p.m. on March 15, 2010.

By statute, a peremptory writ of mandate may issue only if "issuance of the writ will not substantially interfere with the printing and distribution of the ballot pamphlet as required by law." (Elec. Code, § 9092; Gov. Code, § 88006.) Considering the declaration of the State Printer, we concluded that there remained adequate time to print the ballot materials even if there is an additional delay of one day past 5:00 p.m. on March 15, 2010. We therefore issued a mandatory stay, in essence a form of injunctive relief, to preserve this court's jurisdiction and avoid this petition becoming moot.

II. Judicial Review

This case presents a narrow issue. Petitioner challenges the specific language used in the ballot label, title, and summary, on the grounds that it is not objective and is argumentative and partial to Proposition 14. In ordinary cases, writ review of these matters may be granted "upon clear and convincing proof that the copy in question is false, misleading, or inconsistent with the requirements of this code or Chapter 8

(commencing with Section 88000) of Title 9 of the Government Code." (Elec. Code, § 9092; see Gov. Code, § 88006.) However, in Senate Bill No. 19, the Legislature purported to supersede "any other provision of law" in setting forth the language to be used in the ballot materials. Further, the Legislature prohibited the Attorney General from exercising what would otherwise be his statutory obligation to provide "a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure." (Elec. Code, § 9051; see also Elec. Code, §§ 9050, 9053.)[7]

Assuming, without deciding, that the Legislature acted lawfully in setting forth the language to be included in the

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[7] Elections Code section 9051 provides: "(a)(1) The ballot title and summary may differ from the legislative, circulating, or other title and summary of the measure and shall not exceed 100 words, not including the fiscal impact.

"(2) The ballot title and summary shall be amended to include a summary of the Legislative Analyst's estimate of the net state and local government fiscal impact prepared pursuant to Section 9087, and Section 88003 of the Government Code.

"(b) The ballot label shall contain no more than 75 words and shall be a condensed version of the ballot title and summary including the financial impact summary prepared pursuant to Section 9087 and Section 88003 of the Government Code.

"(c) In providing the ballot title and summary, the Attorney General shall give a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure."

ballot, we agree with petitioner and the superior court that judicial review is nevertheless warranted to ensure that the language is not biased, inaccurate, or misleading.[8] While the Legislature is empowered to "provide the manner in which petitions shall be circulated, presented, and certified, and measures submitted to the electors" (Cal. Const., art. II, § 10, subd. (e)), it must also "provide for . . . free elections" (Cal. Const., art. II, § 3) and must "prohibit improper practices that affect elections . . ." (Cal. Const., art. II, § 4).

In *Stanson v. Mott* (1976) 17 Cal.3d 206 (*Stanson*), the state Supreme Court declared that "[a] fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions." The Legislature is uniquely positioned to bestow an unfair advantage to one side in its description of a ballot measure submitted for a vote of the people. In *Stanson*, the Supreme Court was concerned with the use of public funds to tilt the balance in an election contest. (*Id.* at p. 217.) It cautioned that "the use of the public treasury to mount an election campaign which attempts to influence the resolution of issues which our

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[8] A challenge to the Legislature's authority to draft the ballot language is currently pending in this court in *Howard Jarvis Taxpayers Assn. et al. v. Bowen (Debra)* (C060441). Petitioner does not raise this issue in the current petition; accordingly, we do not consider it here or express any opinion as to its relevant merits.

Constitution leave to the 'free election' of the people (see Cal. Const., art. II, § 2) does present a serious threat to the integrity of the electoral process." (*Stanson*, at p. 218.)

The Legislature, which is obligated to provide for the "free elections" of the people, cannot selectively immunize its own ballot label, title, and summary from the ordinary requirement that such language not be false, misleading, or otherwise partial to the measure at issue. (See Elec. Code, § 9051; *Lungren*, *supra*, 48 Cal.App.4th at p. 440, fn. 1.) In *Stanson*, the court viewed the use of the public treasury to mount an election campaign as constitutionally suspect. (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 36.) The use of the state's law-making apparatus to influence voters in the consideration of a ballot measure is equally suspect.

If the Legislature undertakes to prescribe the content of a ballot label, title, and summary, it must do so in language that is accurate, impartial, and not likely to create prejudice, for or against the proposed measure. Constitutional principles of equal protection and free speech are implicated. (See *Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 1433.)

We hold that judicial review of the language the Legislature has set forth is necessary to ensure that the Legislature does not take advantage of its position to present an unfair or inaccurate description of constitutional changes that a majority of its members favor. In so holding, we conclude that the existing statutory framework for writ review

provides a mechanism for judicial review that does not interfere with the Legislature's authority or otherwise violate separation of powers principles.

III. The Standard of Review

Ordinarily, there is deference accorded to the ballot title and summary prepared by the Attorney General. (See, e.g., *Lungren*, *supra*, 48 Cal.App.4th at pp. 439-440; Elec. Code, § 9092; Gov. Code, § 88006.) Petitioner suggests that "heightened judicial scrutiny" should be employed here in order to be consistent "with the obligation of the courts to ensure the integrity of the elections process."

We find it unnecessary to determine precisely whether, and to what extent, our review of language originally set forth by the Legislature should be deferential. Under the particular facts here, as we shall explain, references to "reform" in the current language are unequivocally argumentative and favorable to Proposition 14, even if a deferential standard of review is warranted. The remaining language that petitioner challenges is not problematic, even if no deference is given to the Legislature's version (or to the superior court's revision as explained hereafter).

IV. The Ballot Language

A. "Reforms" and "Reforming"

The first issue petitioner raises is that use of the root word "reform" is improper. The Legislature's original version of the ballot label, title, and summary contained three uses of the word reform or its variations, including referring to the

constitutional amendment as a "PRIMARY ELECTION PROCESS REFORM." (Stats. 2009, 3d Ex. Sess. 2009, ch. 7, § 9(c)(1).) The superior court eliminated this reference to "reform," but allowed two other references to remain. Specifically, the ballot label includes the following sentence: "Reforms the primary election process for congressional, statewide, and legislative races." The ballot summary states that it "[e]ncourages increased participation in elections . . . by reforming the procedure by which candidates are selected in primary elections."

Merriam-Webster's Dictionary defines "reform" as follows: "**1 a** : to put or change into an improved form or condition **b** : to amend or improve by change of form or removal of faults or abuses **2** : to put an end to (an evil) by enforcing or introducing a better method or course of action **3** : to induce or cause to abandon evil ways <~ a drunkard> **4 a** : to subject (hydrocarbons) to cracking **b** : to produce (as gasoline or gas) by cracking." (Merriam-Webster's Collegiate Dict. (11th ed. 2006) p. 1046.)

Each of the first three definitions refers to something that can unequivocally be labeled a positive change, as opposed to a neutral or negative change. Black's Law Dictionary likewise indicates a "law reform" is a positive change. It states that "law reform" is "[t]he process of, or a movement dedicated to, streamlining, modernizing, or otherwise improving a body of law generally or the code governing a particular branch of the law; specif., the investigation and discussion of

the law on a topic (e.g., bankruptcy), usu. by a commission or expert committee, with the goal of formulating proposals for change to improve the operation of the law." (Black's Law Dict. (8th Ed. 2004) p. 904.)

We note that the word reform is in a prominent position on the ballot label; it is the first word of the first full sentence. In the ballot summary, it is contained within the first bullet point. The word reform had an even more prominent position prior to the superior court's revision of the title. There appears to us little doubt that inclusion of the word "reform" is misleading insofar as it reflects an inherent value judgment that there is a need for "reform" of the existing electoral process. Any "reform" is, quite simply, a positive "change." And "change" is the word that petitioner asked the superior court use in place of "reform."

In this respect, we find *Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417 persuasive in its discussion of how a particular word may carry a loaded meaning. In that case, the Court of Appeal took issue with the word "exemption" in the title of a city ballot measure aimed at increasing taxes for the city's sole electricity-generating plant. (*Id.* at pp. 1422, 1433-1434.) The title of the measure as it appeared on the ballot was: "'Amendment of Utility Tax by Removing Electric Power Plant Exemption.'" (*Id.* at p. 1425.) The Court of Appeal observed that "'[e]xemptions'—particularly in a tax context—connote unfair influence and special treatment"

and that the word "exclusion" was more accurate and neutral. (*Id.* at p. 1434.)

Having similarly concluded that the word "reform" has a connotation that is not shared by the more neutral and accurate "change," we shall order the references in the ballot language to "reforms" and "reforming" be revised to "changes" and "changing," respectively.

B. "Increases Right to Participate in Primary Elections"

The ballot label and title set forth by the Legislature referred to "GREATER PARTICIPATION IN ELECTIONS." (Stats. 2009, 3d Ex. Sess. 2009, ch. 7, § 9(b)(1) & (c)(1).) The superior court agreed with petitioner that this language was misleading insofar as it referred "to the voter's range of choices, not voter turnout" and that it was confusing and misleading as to whether it increased "voters' options in elections other than primaries." The superior court modified the label and title to state: "INCREASES RIGHT TO PARTICIPATE IN PRIMARY ELECTIONS."

Petitioner claims the language is still argumentative or biased in that it promises to increase voters' fundamental voting rights. Petitioner further suggests that even "the use of the word 'increases' is in and of itself argumentative" because it is positive language that provides "no perspective" on the alleged increase. Petitioner notes that eliminating rights would be viewed as a negative, and that by similar logic, increasing rights is simply not neutral.

The problem with petitioner's argument is that the language is accurate in that the ballot measure does "increase" the right

to participate in primary elections in a manner that is otherwise adequately and accurately described. The fact that it affects a right or characterizes something as a right does not mean that it is false where the "right" itself is fully described. The ballot label specifies that it: "Allows all voters to choose any candidate regardless of the candidate's or voter's political party preference." The summary provides that it: "Gives voters increased options in the primary by allowing all voters to choose any candidate regardless of the candidate's or voter's political party preference." This is a "right" that does not now exist and therefore it is correct to say that the proposed constitutional amendment "increases [the] right to participate in primary elections."

C. "Encourages Increased Participation" and "Gives Voters Increased Options"

Next, petitioner challenges two phrases. The first appears in both the Legislature's original version and the superior court's revision of the ballot summary: "Encourages increased participation in elections for congressional, legislative, and statewide offices by reforming the procedure by which candidates are selected in primary elections." The second was slightly modified by the superior court. The original version of the ballot summary by the Legislature stated the proposed constitutional amendment: "Gives voters increased options by allowing all voters to choose any candidate regardless of the candidate's or voter's political party preference." (Stats. 2009, 3d Ex. Sess. 2009, ch. 7, § 9(c)(1).) The superior court

revised that language by specifying that it applied "in the primary" election.

Petitioner complains that the materials fail to disclose that political parties will lose their existing right to have their nominees represented in the general election and that neither parties nor independents nor write-in candidates would be guaranteed access to the general ballot. Petitioner argues: "The claim that voters will have more options is a classic example of something that can be both literally true in some sense, but materially misleading more generally." Petitioner points to a declaration presented in the superior court in support of his position that there is evidence the top-two primary system does not increase voter turnout.

Even assuming this is true, we do not find the language to be misleading or to overlook the primary points of the proposed constitutional amendment. The rest of the second phrase at issue adequately describes exactly how the proposed constitutional amendment increases voters' "options" and also puts the first phrase into context.

D. "On the Primary Ballot"

Petitioner also highlights the following italicized language in the superior court's revision of the ballot summary as being potentially problematic: "Provides that candidates may choose not to have a political party preference indicated *on the primary ballot*." But petitioner does not directly address this language in the "argument" portion of his petition. Accordingly, petitioner has not made a sufficient legal argument

that requires us to consider the point. (See *People v. Stanley* (1995) 10 Cal.4th 764, 793.)

Based on petitioner's earlier review of the provisions of Proposition 14, we may infer that petitioner believes it is more accurate to specify that a candidate's choice concerning his or her political party preference (or lack thereof) will govern both the primary ballot and the general election ballot. But we note that the selection of a party preference (or no party preference) is made before preparation of the primary ballot, and there is no language in the ballot summary suggesting such a designation might be changed for purposes of the general election ballot.

CONCLUSION

Having complied with the procedural requirements for issuance of a peremptory writ in the first instance, we are authorized to issue the writ. (See *Palma*, *supra*, 36 Cal.3d 171.) Let a peremptory writ of mandate issue vacating the superior court's March 12, 2010, judgment and peremptory writ of mandate and requiring the superior court to enter a new and different decision as described herein. The superior court's decision shall require that the ballot label, title, and summary for Proposition 14 be revised to eliminate uses of the word "reform" and its variations. The revised versions of the ballot label, title, and summary for Proposition 14 are attached as

Appendix A to this opinion.[9] In all other respects, the petition for writ of mandate is denied. This decision is final forthwith as to this court. (See Cal. Rules of Court, rule 8.490(b)(3).)

Further, the temporary stay order issued by this court on March 15, 2010, is vacated and the following stay order shall remain in effect until this decision is final for purposes of review: The Secretary of State shall not cause to be submitted to the State Printer (nor shall the State Printer use) any language for the ballot label, title, and summary for Proposition 14 except for the language included in Appendix A to this opinion.

The parties shall bear their own costs in this original proceeding. (Cal. Rules of Court, rule 8.493(a)(1)(B).)

RAYE, J.

We concur:

SCOTLAND, P. J.

HULL, J.

[9] Appendix A incorporates the changes ordered in this opinion as well as those required by our opinion in the related case previously noted. (Fn. 5, *ante; Taylor v. Superior Court*, *supra*, C064428.)

APPENDIX A

BALLOT LABEL

ELECTIONS. INCREASES RIGHT TO PARTICIPATE IN PRIMARY ELECTIONS. Changes the primary election process for congressional, statewide, and legislative races. Allows all voters to choose any candidate regardless of the candidate's or voter's political party preference. Ensures that the two candidates receiving the greatest number of votes will appear on the general election ballot regardless of party preference. Fiscal Impact: No significant net change in state and local government costs to administer elections.

BALLOT TITLE AND SUMMARY

ELECTIONS. INCREASES RIGHT TO PARTICIPATE IN PRIMARY ELECTIONS.

- Encourages increased participation in elections for congressional, legislative, and statewide offices by changing the procedure by which candidates are selected in primary elections.
- Gives voters increased options in the primary by allowing all voters to choose any candidate regardless of the candidate's or voter's political party preference.
- Provides that candidates may choose not to have a political party preference indicated on the primary ballot.

- Provides that only the two candidates receiving the greatest number of votes in the primary will appear on the general election ballot regardless of party preference.
- Does not change primary elections for President, party committee offices and nonpartisan offices.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- No significant net change in state and local government costs to administer elections.